

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF TEXAS,

Defendant.

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Civil No. 1:21-cv-796

**UNITED STATES' OPPOSED MOTION FOR EXPEDITED BRIEFING SCHEDULE
ON ITS EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER**

The United States respectfully moves this Court to enter an expedited briefing schedule on its Emergency Motion for a Temporary Restraining Order. In support of this motion, the Government states as follows:

1. On September 9, 2021, the United States filed its complaint in this case against the State of Texas, seeking a declaratory judgment that Texas's Senate Bill 8, 87th Leg., Reg. Sess. (Tex. 2021) ("S.B. 8") (to be codified at Tex. Health & Safety Code §§ 171.203(b), 171.204(a)) is invalid, null, and void, as well as preliminary and permanent injunctive relief prohibiting any and all enforcement of S.B. 8 by the State. Dkt. 1, Compl., Prayer for Relief.

2. Given the near-unavailability of constitutionally permitted abortions in Texas since S.B. 8 went into effect fifteen days ago, the United States determined that obtaining emergency relief was necessary. Therefore, on September 14, 2021, the United States filed its Emergency Motion for a Temporary Restraining Order ("TRO") or Preliminary Injunction. The United States' emergency motion seeks to enjoin the effect of S.B. 8 on numerous legal grounds, including that S.B. 8 was enacted in violation of the Fourteenth Amendment and the Supremacy Clause and that S.B. 8 prevents

the very individuals it injures from vindicating their rights through the ordinary process of judicial review.

3. Pursuant to Local Rule CV-7(G), earlier today, undersigned counsel conferred with counsel for the State of Texas via email and phone about a briefing schedule for the United States' request for an emergency TRO, and counsel for the State indicated that "Texas disagrees that emergency consideration is required." Counsel for Texas expressed a willingness to agree to an expedited schedule for the United States' preliminary injunction motion, but the parties did not reach an agreement.

4. After the parties conferred, this Court entered a scheduling order on the United States' motion for a preliminary injunction. Dkt. 12. Following entry of the Court's order, the undersigned again reached out to counsel for the State suggesting a briefing schedule specifically for the request for a TRO or an agreement to the State's previously suggested expedited preliminary-injunction schedule. Counsel indicated the State opposes our motion to set a different schedule from that entered by the Court.

5. In light of the current situation in Texas, the United States respectfully submits that this Court should hold a TRO hearing on an expedited basis. The United States' emergency motion highlights extensive evidence that, since going into effect, S.B. 8 has deprived women in the State of their constitutional right to seek a pre-viability abortion. Because providers in the State are adhering to S.B. 8, "the vast majority of women seeking abortions in Texas are being turned away." Dkt. 6-1 at 8. Providers in Texas confirmed that many patients have already been forced to travel hundreds and sometimes thousands of miles to obtain an abortion out of state. *Id.* This includes a minor who was raped by a family member and had to travel eight hours from Galveston to Oklahoma in order to obtain an abortion. *Id.* And for the women who cannot make such a trip—because of costs,

immigration-related restrictions on their travel, or work, family, or childcare responsibilities—the impact of S.B. 8 is even more acute. *Id.* at 8-9.

6. At bottom, S.B. 8 has thus far succeeded in depriving women of their constitutional rights while preventing women and providers from successfully seeking an injunction of enforcement of this plainly unconstitutional law. Indeed, one clinic attested that without “court ordered relief in the next couple of weeks, S.B. 8 will shutter *most if not all of the remaining abortion clinics* in Texas.” Dkt. 6-6 at 10. Emergency relief is necessary to ensure that, in the weeks prior to a preliminary injunction hearing, the State cannot continue to disregard the Constitution and further endanger the operations of abortion providers in the State.

7. In light of the irreparable harm the United States has identified, the United States requests the following expedited schedule for its emergency motion for a TRO:

- a. State of Texas opposition due Monday, **September 20, 2021 at 12 p.m.**
- b. Hearing on the United States’ Emergency Motion for a Temporary Restraining Order on Tuesday, **September 21, 2021** subject to the Court’s schedule.

8. Under this proposal, the Court could then set a briefing schedule for the United States’ motion for a preliminary injunction following resolution of the United States’ motion for a TRO.

WHEREFORE, the United States respectfully requests that this Court enter the proposed briefing schedule for the United States’ Emergency Motion for a Temporary Restraining Order.

Dated: September 15, 2021

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I certify that I conferred via email with counsel for the State of Texas regarding the relief requested in this application. Counsel for the State indicated that the State is opposed to the requested relief.

/s/ Lisa Newman
Lisa Newman

CERTIFICATE OF SERVICE

I certify that a copy of this filing was emailed to Kenneth Paxton, Attorney General for the State of Texas, and Brent Webster, the First Assistant to the Texas Attorney General. I further certify that parties will also be served pursuant to Rule 5(b) of the Federal Rules of Civil Procedure.

/s/ Lisa Newman

Lisa Newman